

NOT DESIGNATED FOR PUBLICATION  
DIVISION IV

CACR06-491

JANUARY 17, 2007

JASON THRESHER		APPEAL FROM THE GARLAND
	APPELLANT	COUNTY CIRCUIT COURT
		[NO. CR2004-291-1]
V.		HON. JOHN H. WRIGHT,
		JUDGE
STATE OF ARKANSAS		
	APPELLEE	AFFIRMED

Appellant Jason Thresher was convicted of manufacturing methamphetamine, a Class Y felony. He was sentenced to twenty years' imprisonment in the Arkansas Department of Correction. His sole contention on appeal is that the trial court erred in finding that there was sufficient evidence to convict him. We affirm.

At trial, Corporal Keith Bush testified that on March 24, 2004, he stopped a red pickup truck for failing to use a turn signal. Bush said that Thresher was driving the vehicle and that there was one passenger, Larry Gilkie. After Bush approached the vehicle, he discovered that Thresher's driver's license was suspended and that there were warrants for Thresher's arrest; Bush then arrested Thresher and searched the vehicle, finding what he believed to be various types of drug paraphernalia. At that point, Bush contacted Drug Task Force officers for assistance.

Richard Norris testified that he was a sergeant for the Hot Springs Police Department and that he was a member of the Eighteenth East Drug Task Force. He said that on March 24, 2004, he was called to a traffic stop involving Thresher and that he found the following items inside a black trunk in the bed of Thresher's truck: an electric two-burner hotplate, plastic, plastic tubing, three pieces of glassware, new coffee filters, a quart of hydrogen peroxide, two eighteen-ounce bottles of Red Devil lye, and three syringes. Other items located in the trunk were as follows: two plastic Heet bottles containing a liquid and sediment; two glass jugs, each containing a bi-layer liquid; a "quart glass jar with a milky colored liquid"; a "one-pint glass jar containing a clear liquid"; a glass jar containing numerous striker plates with a red liquid; and a glass jar containing gray crystals, which weighed approximately one ounce. A 5000-watt generator was found in the bed of the truck.

A one-pint glass jar containing a cloudy liquid with white sediment was found in the passenger-side floorboard of Thresher's vehicle. A one-gallon can labeled "camp fuel," numerous glass jars, two propane heating elements, and one heat lamp were found in a "green zippered bag" that was also in the bed of the pickup truck. Numerous plastic bags, a digital scale, three syringes, six spoons with residue, and a plastic bag containing a red granular substance were located in a small "brown zippered bag" in the cab of the truck. A bottle of Roto drain opener, a box of salt, and a plastic Motts bottle containing a bi-layer liquid were also found in the bed of the truck. Samples of these substances were taken and submitted to the State Crime Lab.

Jennifer Perry, a forensic chemist at the State Crime Laboratory, described the “hydriodic acid/red phosphorus” method of manufacturing methamphetamine. She explained that the process involves combining iodine crystals, red phosphorus (typically obtained from matchbook striker plates), and pseudoephedrine or ephedrine (typically obtained from cold and allergy pills that are soaked in a solvent). She said that after these ingredients are combined, the end result is “some liquid” and “sludge” that would usually contain the phosphorus and the iodine. She said that the liquid would typically be separated from the sludge and combined with Red Devil lye (a base), and an organic solvent would be added to form a bi-layer liquid. She further stated as follows:

Meth in its basic form wants to be in the organic solvent. Then they can take their organic solvent off—these are some examples of bi-layers—they take their organic solvent off, that’s the layer that’s the pH of seven (7), and then they combine table salt, liquid fire, which is sulfuric acid ... combine it and ... the combination will form a hydrogen chloride acid gas. When they pump that gas through their organic solvent layer, that forms meth-hydrochloride and it powders out. All they then have to do [is] dry it down and that is the usable form of methamphetamine.

The stage [at which] methamphetamine is actually produced is ... the bi-layer liquid ... through a chemical synthesis of sorts. Once the chemicals are combined and once you have the sludge material and [put] it into the bi-layer, that’s when the methamphetamine has been created.

Perry said that the Heet bottles obtained from Thresher’s vehicle contained pseudoephedrine in “pill soak” form. She also said that the two glass jugs with the bi-layer liquids contained methamphetamine, which was not in powder form, but it was “actually methamphetamine.” According to Perry, the quart-glass jar with the “milky” liquid was indicative of the bottom layer of a bi-layer liquid, which suggested that the top layer had been

removed for the “powdering out process.” The jar containing striker plates and red liquid tested positive for phosphorus, and the gray crystals were found to be iodine. The liquid in the passenger-side floorboard of Thresher’s vehicle contained methamphetamine. The plastic bag containing the red granular substance contained methamphetamine, phosphorus, iodine, and acid, which Perry said she would “expect to find in sludge.” The liquid in the Motts bottle also contained methamphetamine. Perry opined that methamphetamine “was being” manufactured in this case.

Scott Gosa testified that he worked for the Narcotics Division of the Hot Springs Police Department and that he assisted in searching Thresher’s vehicle on March 24, 2004. Gosa said that he read Thresher his rights and subsequently received a statement from Thresher in which he admitted that everything in the truck was his; that his passenger, Larry Gilkie, knew nothing about the items found in the vehicle; that he (Thresher) knew how to cook meth; and that he had been cooking meth for approximately seven years.

At the close of the State’s evidence, Thresher moved for a directed verdict on the grounds that the State failed to prove that he had produced the methamphetamine found in his vehicle. The trial court denied the motion. Thresher rested and renewed the motion, which the court again denied. The jury returned a verdict of guilty on the charge of manufacturing a controlled substance (methamphetamine), and Thresher was sentenced to twenty years in the Arkansas Department of Correction. This appeal followed.

Arkansas Code Annotated section 5-64-401(a) (Supp. 2003) states that it is unlawful for any person to manufacture a controlled substance. For purposes of this statute, Arkansas Code Annotated section 5-64-101(m) (Repl. 1997) defines “manufacture” as follows:

“Manufacture” means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

1. By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice;
2. By a practitioner or by his authorized agent under his supervision for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale[.]

On appeal, Thresher contends that the trial court erred in finding that there was sufficient evidence to support his conviction for manufacturing methamphetamine. Specifically, he argues that there was no evidence that he “produced, prepared, compounded, or processed” any of the methamphetamine found in his car. Thresher further asserts that there were “too many questions left unanswered in this case,” including who actually manufactured the methamphetamine, when it was created, whether anyone else was there at the time it was manufactured, and whether he actually manufactured the substance or had “just picked up the by products from a friend.” He therefore asks this court to reverse his conviction.

When a defendant challenges the sufficiency of the evidence that led to a conviction, the evidence is viewed in the light most favorable to the State. *Loar v. State*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Nov. 30, 2006). Only evidence supporting the verdict will be considered. *Id.* We affirm a judgment of conviction if substantial evidence exists to support it. *Gaye v. State*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Nov. 16, 2006). Substantial evidence is evidence which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.* Circumstantial evidence may constitute substantial evidence to support a conviction. *Id.* The longstanding rule in the use of circumstantial evidence is that, to be substantial, the evidence must exclude every other reasonable hypothesis than that of the guilt of the accused. *Id.* The question of whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence is for the jury to decide. *Id.* Upon review, this court must determine whether the jury resorted to speculation and conjecture in reaching its verdict. *Id.*

Here, there is circumstantial evidence to support Thresher's conviction, and the jury did not resort to speculation and conjecture in reaching its verdict. There were numerous items found in Thresher's truck that are utilized in the process of manufacturing methamphetamine, as described by Jennifer Perry. These items included iodine, phosphorus, and pseudoephedrine, which, according to Perry, are the major ingredients in the "hydriodic acid/red phosphorus" method of manufacturing methamphetamine. Actual methamphetamine was also found in the truck, although it was not in the typical powder form. Perry opined that methamphetamine was being manufactured in this case.

In addition, Thresher admitted that the items in the truck were his, that he knew how to cook meth, and that he had been cooking meth for seven years. The jury obviously decided that the evidence excluded every reasonable hypothesis other than Thresher's guilt. We cannot say that the jury resorted to speculation and conjecture in reaching its verdict; thus, we affirm.

Affirmed.

HART and GRIFFEN, JJ., agree.